

APPLICATION INSTRUCTIONS

AND SUPPLEMENTAL INFORMATION

FOR

PERMITS

UNDER THE

MARINE MAMMAL PROTECTION ACT

FUR SEAL ACT

FOR

PUBLIC DISPLAY

DEPARTMENT OF COMMERCE
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National Marine Fisheries Service
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Introduction

The National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) share responsibilities under the Marine Mammal Protection Act of 1972 (MMPA) and the Endangered Species Act of 1973 (ESA) for the management of marine mammals in the United States. NMFS has the responsibility for all cetaceans and pinnipeds (except walrus) under the two acts. NMFS has the sole responsibility under the Fur Seal Act of 1966 (FSA). A full list of the marine mammal species under the jurisdiction of NMFS is included in the supplemental information portion of these instructions. The list shows the status of each animal under the ESA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Animals for which the Fish and Wildlife Service share responsibility or has sole responsibility are annotated on the list.

Under these statutes and implementing regulations, NMFS may issue permits for the taking¹, importing and exporting of marine mammals, including threatened or endangered species, for scientific purposes or to enhance the propagation or survival of such species (50 CFR Parts 216 and 217-222); and the taking, import, or export of marine mammals for purposes of scientific research, public display, enhancing the survival or recovery of a species or stock, or the taking of marine mammals by no more than Level B harassment for photography for commercial or educational purposes (50 CFR Part 216). Permits to take fur seals are issued under the MMPA and the FSA.

Activities For Which These Instructions Apply

These instructions provide the format for preparing public display permits to take marine mammals, under the jurisdiction of NMFS. These instructions also may apply to marine mammals under the jurisdiction of Fish and Wildlife Service, as well as threatened or endangered sea turtles that, in rare instances, may be incidentally affected during the course of a capture of a marine mammal.

Application instructions for marine mammals under NMFS jurisdiction can be obtained by calling the Permit Division of the Office of Protected Resources (301/713-2289) or by accessing the NMFS website: http://www.nmfs.gov/prot_res/prot_res.html. Application instructions for fish and sea turtles (in the marine environment) can be obtained through the Endangered Species Division of the Office of Protected Resources (301/713-1401). Application instructions for sea turtles (on land) and marine mammal species under FWS jurisdiction can be obtained by calling the Office of Management Authority, FWS (1-800-358-2104).

¹ Under the MMPA, the term “take” is defined as: “To harass, hunt, capture or kill, or attempt to harass, hunt, capture, or kill any marine mammal. The 1994 Amendments to the MMPA statutorily define the term “harassment” as: “Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing a disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).” Under the ESA, the term “take” is defined as: “To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

These instructions do not apply to the following types of permits/authorizations:

- Scientific Research/Enhancement under the MMPA;
- Commerical/Educational photography under the MMPA; and
- Public Display permits under the MMPA for marine mammals under FWS jurisdiction (sea and marine otters, walrus, manatees, dugongs and polar bears)

Guidelines for Using These Instructions

Give Complete Information:

NMFS tries to process all applications in a timely manner. However, an application must be complete before it will be forwarded to reviewers and before a Notice of Receipt is published in the Federal Register. Incomplete applications will not be processed; instead, additional information will be requested or the application will be returned. Therefore, please provide complete and specific information. When a question does not apply, do not overlook the section, but indicate Not Applicable (N/A). In some cases, a brief explanation as to why the category is not applicable will expedite processing.

Please note that the processing of a **complete** application usually requires 90 days from submission to final action and includes a 30-day public comment period.

Applicants Who Have Previously Been Issued a Permit:

If an applicant is or has been a permit holder, the new application will not be processed until all reports required to date under such permits have been submitted.

Permit Amendments:

Requests for amendments to permits should address all applicable sections of these instructions, including a detailed description of the proposed changes. Amendment requests involving an increase in number, changes of location or species are subject to a 30-day public review and are granted or denied at the discretion of the Director, Office of Protected Resources. Minor changes not involving numbers, species or locations may be authorized at the discretion of the Director without public review.

Permit Fees:

Section 104(g) of the MMPA provides the authority to establish and charge a reasonable permit fee; however, there is no fee at this time.

INSTRUCTIONS

PLEASE READ the INTRODUCTION, the INSTRUCTIONS, the SUPPLEMENTAL INFORMATION, and applicable sections of the ATTACHED PERMIT REGULATIONS BEFORE preparing your application. Reading these sections FIRST will save you time and help you avoid common errors. Please pay particular attention to the attached Permit Regulations as these regulations include both permit issuance criteria and requirements, information that you should find most useful in preparing a complete application.

IMPORTANT

Information should be presented in the following categories. If a section or question does not apply, indicate Not Applicable (N/A) with a brief, but complete, explanation as to why.

I. Title of the Application.

Please select one of the titles below as appropriate. If the application is submitted under more than one Act or for more than one purpose, please select one of the titles below as appropriate -

- A. Application for a Permit for Public Display under the Marine Mammal Protection Act;
- B. Application for a Permit for Public Display under the Marine Mammal Protection Act and the Fur Seal Act².

II. Date of the Application.

III. Applicant.

State complete name, address, telephone number, and institutional affiliation, if any, of the Applicant. If the Applicant is a partnership or corporation describe the business relationship. In addition, state complete name, address, telephone number, and institutional affiliation of the Holder, Primary Contact, and Responsible Official (see attached glossary for complete definitions of these terms).

IV. General Description of the Marine Mammals to be Taken and/or Imported and the Proposed Activity.

A. Statement of Work

² - Please review the information concerning Northern fur seals provided in Supplemental Information.

Provide a brief summary (200 words or less) of the proposed work to be conducted including the manner in which such activity involves the taking, importing, or exporting of marine mammals or marine mammal parts.

B. Summary of Marine Mammals to be Taken

1. List the species (common and scientific names) and, as applicable, the subspecies or population group that may be taken. In the case of a wild capture, list any species that may be incidentally taken during the course of collection activities (*i.e.*, non-target species), including non-marine mammal species such as sea turtles;
2. Where the proposed activity involves marine mammal parts, list the part(s) that will be taken or imported.
3. For animals in the wild, provide a summary of the best available information concerning the status of the affected species or stock(s) and factors affecting this status (cite sources).

C. Description of the Proposed Activity

1. The dates and locations of the proposed taking or import. Dates and locations should be identified as specifically as possible; including ports of entry.
2. The proposed duration of the permit.
3. The type(s) of taking involved, (e.g. capture/maintain, import, etc.). Clearly indicate the estimated age, size, sex, and reproductive condition, of the marine mammal(s), that will be taken and the number that are to be taken. Permit holders may not capture or import a marine mammal that is pregnant, lactating, or either unweaned or less than 8 months old, whichever comes later, unless the Office Director determines that such capture or importation is necessary for the protection and welfare of the animal.

D. If Marine Mammals are to be Collected from the Wild

1. The name(s), if other than the Applicant, and qualifications of the personnel who will capture the animals;
2. A detailed description of the manner of capture, including gear to be used;
3. The techniques and equipment to be used to approach, capture and restrain; for example, indicate: (a) any drugs or other substances to be used, including the name, dosage, and method of administration; and/or (b) the method of capture and restraint;
4. A written certification from the attending veterinarian responsible for the animals during and immediately after capture that the methods of capture and post-capture care will be adequate to ensure the well-being of the animals;
5. A description of the pen, tank, container, cage, cradle or other device used post-capture and thereafter during transportation to the initial holding facility;
6. A description of the mode of transportation, special care during transport, and the length of time required for the transfer from the capture site to the initial holding facility;
7. Any alternatives to the proposed manner of taking or importation, and state why the proposed method is considered humane;
8. In addition, if a captive stock of the species concerned is available, the applicant must explain why the animal(s) cannot be obtained from such captive stock; and
9. If an animal maybe determined to be unsuitable for public display, give details regarding the plan for return to the wild.

E. Taking of Marine Mammal Parts

If the activity involves the taking or importation of marine mammal parts obtained from or following the death of a captive marine mammal, provide a description of the part(s) including the NMFS Marine Mammal Inventory Identification Number assigned to the subject captive marine mammal and located on the specimen; the original source of the part(s) (e.g., beached or stranded animals, captive animals, animals obtained from the wild, imported, or unknown); the location and date of original collection; and the name/identity of the collector.

A permit is not required for the export of marine mammal parts for public display purposes. However, such exports must adhere to the above mentioned regulations as set forth in 50 CFR Part 216.37.

F. Describe the effects of the proposed activity, including:

The effects of the proposed taking or import, by itself or in combination with other known or suspected taking, import, or export on: (a) the individual animals concerned, (b) the relevant species or stock, (c) the human environment, and (d) the marine ecosystem. The description must be sufficiently detailed to enable the preparation of any documentation required under the National Environmental Protection Act (e.g., an environmental assessment (EA), environmental impact statement (EIS), or documentation to support a determination that the conduct of the activity is categorically excluded from the requirement to prepare an EA or EIS).

G. Previous Permits

1. **Previous Permits:** If issued previous permits for the taking, import, or export of marine mammals and a final report has not yet been submitted, ensure that all required reports to date have been submitted.
2. **Sponsors and Cooperating Institutions:** If applicable, provide the names and addresses of cooperating institutions and individuals.
3. **Other Permits:** Indicate whether other Federal and State permits (*e.g.*, Fish and Wildlife Service, NOAA National Marine Sanctuaries, the Army Corps of Engineers) are being sought in connection with the requested permit.

V. Import

If the application involves the import of marine mammals, the following information is required.

- A. The names and qualifications of the personnel who will accompany the animals during import.
- B. A description of the pen, tank, container, cage, cradle or other device used during import, and thereafter during transportation to the initial holding facility;
- C. A description of the mode of transportation, special care during transport, and the length of time required for the transfer from the foreign facility to the initial holding facility in the United States; and
- D. A written certification from the attending veterinarian responsible for the animals during import that the methods of import and post-import care, will be adequate to ensure the well-being of the animals.

- E. The country of exportation (i.e., the country from which the marine mammal is to be imported into the United States) and the country of origin (country from which the animal was originally taken from the wild or where born in captivity) if different from the country of exportation.
- F. A description of how the marine mammal(s) were taken in the country of origin. Permit holders may not capture or import a marine mammal that is pregnant, lactating, or either unweaned or less than 8 months old, whichever comes later, unless the Office Director determines that such capture or importation is necessary for the protection and welfare of the animal. If the marine mammal was subsequently exported to a country different from the country of origin, cite the date(s), the manner and circumstances under which it was imported into the country of exportation.
- G. A statement and, to the extent practicable, documentation concerning whether the marine mammal to be imported was captured and is presently being held in compliance with the laws of the country of exportation.
- H. A statement whether taking of marine mammals will occur in order to replace the marine mammals to be imported; or whether the proposed import will result in an increased demand for marine mammals.
- I. If the import is necessary for the protection or welfare of the marine mammals, discuss the circumstances involved and any alternatives considered.

VI. Exports

A permit is not required for the export of marine mammals for public display purposes. However, such exports must meet standards comparable to those applicable to the transport of marine mammals between U.S. facilities according to the MMPA. These requirements are provided for information.

- A. Foreign applicants that intend only to export from the U.S. marine mammals for the purposes of public display must meet the following requirements:
 - 1. Offer an education or conservation program comparable to one that is based on professionally recognized standards of the U.S. public display community;
 - 2. Meet standards comparable to those a person in the U.S. must meet to be issued a license under the Animal Welfare Act (7 U.S.C. 2131 et seq.); and
 - 3. Maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than charging an admission fee.

- B. The appropriate agency of the foreign government (e.g., the CITES management authority of the government) must submit a statement certifying that:
1. The information submitted concerning the foreign facility is accurate;
 2. The laws and regulation of the government involved permit that government's enforcement of requirements of the U.S. Marine Mammal Protection Act and the Animal Welfare Act, and that government will enforce such requirements; and
 3. If it is determined that the foreign facility involved has acted in a manner inconsistent with MMPA or the AWA that would be applicable if the foreign facility were a U.S. facility, the government concerned with afford comity to an enforcement decision that may be made by the U.S. National Marine Fisheries Service, including seizure or arrangements for other disposition of marine mammals exported for the U.S. and the progeny of such marine mammals and the recovery of expenses for such seizure or other disposition.

VII. General Requirements for Public Display

- A. Names and addresses of the facility(ies) where the marine mammals to be imported or captured will be maintained. Indicate hours of operation and cost of admission. (Attach copies of facility brochures or public notices advertising this information, if available.)
- B. License (attach a copy) or registration number issued under the Animal Welfare Act by the Department of Agriculture's Animal Plant and Health Inspection Service (APHIS).
- C. Specify the professionally recognized standards of the public display community upon which the education or conservation program offered by the applicant is based³, and provide a general description of the program offered for reference purposes.

VIII. Certification and Signature:

³ - Standards for education and conservation programs developed and endorsed by the American Association of Zoos and Aquariums (AZA) and the Alliance of Marine Mammal Parks and Aquariums (Alliance), representing approximately 60% of the U.S. marine mammal public display community, were published in the Federal Register on October 6, 1994 (59 FR 50900). (A copy of this notice is attached) If applicable, these AZA/Alliance standards may be referenced as the standards on which your education or conservation programs based. However, please note that while these professionally recognized standards have been provided by the AZA and Alliance, they represent only one example of such standards. Other professionally recognized standards of the public display community may differ from this example. If your education or conservation programs based upon different professionally recognized standards of the public display community, please provide a copy of these standards. NMFS maintains a record of these standards for reference purposes only.

The following Certification, followed by the Signature, Name and Title of the Applicant or responsible party, must be submitted as the concluding section of the application.

"I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under one or more of the following statutes and the regulations promulgated thereunder, as indicated in section I. of this application:

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and regulations (50 CFR Part 216); and/or

The Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.).

I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972, or the Fur Seal Act of 1966, whichever are applicable."

- Signature of Applicant and Date of Signature
- Typed or Printed Name of Applicant
- Title of Applicant

WHERE TO SEND APPLICATIONS

[in addition to the hard copies of the application, submission of an electronic version on disk in either WordPerfect or Word will facilitate processing]

Submit an original and two signed copies of the completed application to:

Chief, Permits Division, F/PR1
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Room 13705
Silver Spring, Maryland 20910-3226

All permit documentation including the application, permit and amendments, reports, and inventory information required herein, is considered public information and as such, is subject to the Freedom of Information Act (FOIA). All responses to the collection of information are required to obtain a permit.

Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Protected Resources, National Marine Fisheries

SUPPLEMENTAL INFORMATION

[Public display]

CITES Import/Export Permits:

United States regulations require that imports or exports of wildlife listed on the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) be accompanied by the proper CITES permit or documentation. This is in addition to the required permits under the ESA and, as applicable, the MMPA. The U.S. agency responsible for implementing CITES is the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 (1-800-358-2104), <http://permits.fws.gov/>. The CITES status of endangered species and marine mammals under NMFS jurisdiction is indicated on the attached species list. Please note that all cetaceans are included on either Appendix I or II.

Animal Welfare Act (AWA):

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA/APHIS), has responsibility under the AWA for captive warm-blooded animals, including marine mammals, and has established regulations and standards for animal care, including "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals (9 CFR Ch 1, Subpart E)." Most U.S. facilities maintaining marine mammals are required to be licensed or registered by APHIS. For information concerning the AWA and its requirements, and the name and address of the Veterinarian in Charge in the state concerned, contact the Regulatory Enforcement and Animal Care staff, USDA/APHIS, 4700 River Rd., Unit 87, Riverdale, MD 20734-1234 (301/734-7833) or <http://www.aphis.usda.gov/>.

Beached/Stranded Animals:

NMFS encourages the use of healthy rehabilitated beached/stranded animals in lieu of taking animals from wild populations. Applicants must justify the need for capturing animals from the wild rather than obtaining them from rehabilitated beached/stranded stock, particularly in the case of U.S. coastal pinnipeds, such as California sea lions (*Zalophus californianus*). For information on the availability of these animals contact the appropriate NMFS Regional Office (see attached list).

Northern fur seals (*Callorhinus ursinus*):

The Northern fur seal has been designated as depleted by the National Marine Fisheries Service (NMFS). Section 102(b)(3) of the Marine Mammal Protection Act (MMPA) prohibits the taking of a depleted species except for scientific research or enhancement.

Atlantic bottlenose dolphin (*Tursiops truncatus*):

The taking of bottlenose dolphins in the Eastern United States is limited to certain areas, and quotas have been established limiting the number which may be taken each year. Permit Holders are required to consult with the Southeast Regional Director at least one week prior to collection for approval of the specific dates and locations. The Regional Director will coordinate the Permit Holder's collection activities with other collections and with research activities being conducted in the proposed collection area so as to avoid possible interference and cumulative adverse impacts on the subject population.

Glossary of Terms

Applicant - The applicant must be the person who has the responsibility for and the authority to determine the disposition of the marine mammal to be received under the permit. If the applicant is a corporation or partnership, the application must indicate the date of incorporation or when the partnership was formed, and the State in which the corporation or partnership was formed. In the case of imports, when the responsibility for and authority to determine the disposition of the marine mammal remains with a foreign entity, as in the case of a breeding loan, the applicant must be the U.S. entity that will assume temporary custody of the marine mammal to be imported.

Comity - is generally understood to be a rule of courtesy by which one government honors decisions made by another government. It is in situations where the United States lacks jurisdiction over persons or things located abroad that the U.S. Government may need to seek assurances of comity from foreign governments. Executive Branch agencies have inherent authority to ask foreign governments to honor decisions of the U.S. Government on the basis of comity. It has been the policy of the NMFS since 1975 to require a comity statement for the export of marine mammals.

Facility - means (1) one or more permanent primary enclosures used to hold marine mammals captive (i.e., pools, lagoons) and associated infrastructure (i.e., equipment and supplies necessary for the care and maintenance of marine mammals) where these enclosures are either located within the boundaries of a single contiguous parcel of land and water, or are grouped together within the same general area within which enclosure-to-enclosure transport is expected to be completed in less than one hour; or (2) a traveling display/exhibit, where the enclosure(s) and associated infrastructure is transported together with the marine mammals.

Holder - means the person who has the custody, including the responsibility for and the authority to determine the final disposition of a captive marine mammal, and includes a public display permit holder.

Primary Contact - refers to the registrar or other person responsible for maintaining the marine mammal inventory records at the facility.

Receiver - means a person who receives custody of a transferred marine mammal. Where an interest in a marine mammal is being purchased or otherwise transferred, the receiver is the purchaser or transferee.

Responsible Official - refers to the individual who is responsible for and has the signatory authority for marine mammal custody decisions.

Shipper - means a person with custody of the marine mammal being transferred, i.e., holder. Where an interest in a marine mammal is being sold or otherwise transferred, the shipper is the seller or transferor.

Transfer - means transport, donate, purchase, sale, export, or other change in the possession of or interest in marine mammals.

Transport - means the physical movement of marine mammals between facilities or distinct geographic locations.